

An appeal

- by -

Rodger Allen, a Director or Officer of 568674 British Columbia Ltd.
("Allen")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2002/424

DATE OF DECISION: October 25, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Rodger Allen, a Director or Officer of 568674 British Columbia Ltd. (“Allen”) of a Determination that was issued on July 12, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Allen was a Director or Officer of 568674 British Columbia Ltd., an employer found to have contravened provisions of the *Act*, and, under Section 96 of the *Act*, was ordered to pay an amount of \$1,054.70.

Allen says the Determination is wrong on its facts.

The Tribunal has decided an oral hearing is not required in order to address this appeal.

ISSUE

The sole issue in this appeal is whether there is any basis on which Allen might be relieved of his liability under Section 96 of the *Act*.

FACTS

On July 12, 2002, the Director issued a Determination (the “corporate Determination”) against 568674 British Columbia Ltd. (the “employer”), finding the employer had contravened provisions of the *Act* in respect of the employment of Gabor Kadar (“Kadar”) and ordered the employer to cease contravening and to comply with the *Act* and to pay an amount of \$1,054.70.

That Determination was appealed by the employer and the appeal was dismissed by the Tribunal in BC EST #D476/02.

ARGUMENT AND ANALYSIS

In *Penner and Hauff*, BC EST #D371/96, which referred to and relied on two earlier decisions of the Tribunal, *Kerry Steinemann*, BC EST #D180/96 and *Perfecto Mondo Bistro*, BC EST #D205/96, the Tribunal held that a director or officer, in an appeal from a Determination issued under Section 96 of the *Act*, was precluded from seeking to relitigate the liability of the company and was confined to only those issues which arise under Section 96 of the *Act*. There are sound legal and policy grounds supporting the position espoused by the Tribunal.

This appeal only challenges the merits of the corporate Determination. That matter has already been addressed in the appeal filed by the employer. No issue relating to the application or operation of Section 96 of the *Act* has been raised in this appeal and, accordingly, no basis for cancelling or varying the Determination has been demonstrated.

The appeal is dismissed

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated July 12, 2002 be confirmed in the amount of \$1,054.70, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal